

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1979 of 1991

Date of decision: 17-6-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISHWARBHAI MADHAVBAI R PATEL

Versus

STATE OF GUJARAT .

Appearance:

MR BN PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
SERVED for Respondent No. 2
MR JIVANLAL G SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17-6-97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

This case exhibits the example how an engineering college teacher has been driven to litigation for his legitimate claim for pension and gratuity and other retirement benefits. Instead of pursuing litigation, the respondents should have considered the claim of a teacher, who rendered sincere service for about 28 years, for retirement benefits to him. This is one of the reasons for mounting arrears of matters in this court.

2. The petitioner entered IN the service as Lecturer in Electrical Engineering in B & B Polytechnic on 1-7-1959. Then his services were transferred to Birla Vishvakarma Mahavidyalaya Engineering College, Vallabh Vidyanagar, and he joined service in that college on 8-7-1964.

3. The petitioner applied for voluntary retirement from service of the college and for that purpose made application on 10th September, 1962 to the Management of the college. The management of the collage granted the said application and allowed the petitioner to retire voluntarily with effect from 31st January, 1987 after office hours. The petitioner at that time was holding the post of Professor of Electrical Engineering at the college. Thus, having served for about 28 years the petitioner sought voluntary retirement which has been accepted. The date on which the petitioner applied for voluntary retirement and the date on which it was accepted there was no scheme for pension and gratuity for the teachers in private engineering colleges of the State.

4. However, under the Government Resolution dated 17th December, 1987 pension scheme was made applicable to the teaching and non-teaching staff of non-Government Engineering Colleges and Polytechnics in the State of Gujarat with effect from 1-4-1982. Option was to be submitted by the concerned teacher if pension, in pursuance of the aforesaid resolution, was preferred. There is no dispute that the petitioner opted for pension scheme within the stipulated period. Thereafter correspondence ensued between the college and respondent No.2 - Director of Technical Education - to give sanction for retirement benefit to the petitioner, and last such letter was written by the college to respondent No.2 on 12-3-1990. The petitioner himself made enquiry in the office of respondent No.2 as well as in the office of the College several times regarding sanction of his pension and other retirement benefits. But nothing satisfactory

has come from respondent No.2 The petitioner was advised by some of his well-wishers to pay back the amount of the institution's contribution towards provident fund. Accordingly the petitioner deposited with respondent No.1 total amount of Rs.69707/- on 17th July, 1991, which includes the interest part. When nothing has been done by the respondents, the petitioner has filed this special civil application praying for a declaration that the petitioner is entitled to pension and other retirement benefits on his voluntary retirement with effect from 31st January, 1987, pursuant to the Government resolution dated 17th December, 1987 and all other consequential benefits flowing therefrom, with interest at the rate of 18% per annum.

5. This petition came up for admission before this Court on 3rd April, 1991, when notice was issued to the respondents. After notice, the matter came up before this Court on 4-5-1992. Though the respondents were served, none put appearance. The Court therefore issued rule and made it returnable on 12-7-1992. By way of interim relief the respondents were directed to prepare calculation of the amount payable to the petitioner and to place the same on record by the returnable date. When the matter came up before this Court on 24th April, 1995 this Court granted liberty to the petitioner to implead the college as party respondent. However, nothing transpires from the record of this petition whether the order dated 4-5-1992 has been complied with or not by either of the respondents. None of the respondents have filed reply to this special civil application. Nothing has been produced on record by the respondents in support of their action not to extend the benefit of the resolution dated 17th December, 1987 to the petitioner.

6. From the document annexure-A dated 30-1-1987 it is abundantly clear that the petitioner made request for voluntary retirement from service and that prayer had been accepted by the management. So, it is a case of voluntary retirement of the petitioner after 28 years of service. The day on which he had applied for voluntary retirement and it has been accepted, the pension scheme was not applicable to the teachers of non-Governmental engineering colleges in the State. The pension scheme has been made applicable to the teachers of non-Governmental engineering colleges of the State by resolution dated 17th December, 1987. The pension scheme has been made effective from 1st April, 1982, much prior to the date on which the petitioner sought voluntary retirement. The said resolution dated 17th December, 1987 nowhere states that a person who sought voluntary

retirement will not be entitled for pension and other retirement benefits. Retirement maybe on superannuation or voluntarily. Unless the later class of persons are excluded from applicability of the pension scheme, I fail to see any justification in the action of respondents No.1 and 2 in not extending the benefit of the resolution to the petitioner. The petitioner has returned the amount of share of contribution to Provident Fund made by the management, together with interest. Still respondents No.1 and 2 have not sanctioned pension and other retirement benefits to the petitioner for all these years.

7. In para 7 of the special civil application the petitioner has made reference to the decision of this court in some of the petitions, which pertains to the teachers of non-Governmental colleges other than engineering colleges of the State. There the concerned resolution was dated 15th October, 1984, which is identical to the resolution dated 17th December, 1987 at annexure-C. In that case the pension was made applicable to teaching and non-teaching staff of non-Government colleges, but those teachers who sought voluntary retirement were not given the benefit of the scheme. They approached this Court and this court granted the said benefit. So the case of the petitioner is clearly covered by the decision of this Court, reference to which has been made in para 7 of the petition.

8. In the result this special civil application succeeds and the same is allowed. It is hereby declared that the petitioner is entitled to the benefit of pension and other retirement benefits in pursuance of the Government Resolution dated 17th December, 1987. The petitioner is entitled to pension and other benefits with effect from 31st January, 1987. It is a case where the petitioner has been deprived of his own amount of retirement benefits for all these years without any justification. The respondents have not filed reply and failed to give any justification for denial of the benefit to the petitioner for all these years. The petitioner being a retired professor would have earned the amount for his own benefit by investing the same in some long term deposit and would have earned interest thereon. This loss which he suffered is clearly attributable to respondents No.1 and 2; and the petitioner is not in any way at fault. In view of this fact I find justification in the prayer made by the petitioner for grant of interest on the retirement benefits to the petitioner. Now the question is at what rate interest should be awarded and from which date. It

is true that the petitioner is entitled to retirement benefit from 31st December, 1987. It is equally true that the petitioner has returned the amount of contribution of the management to the P.F. account only on 17th January, 1991. Till then he retained the said amount and he enjoyed the benefit of interest thereon. So the petitioner is entitled to interest on the retirement benefits with effect from 18th January, 1991.

So far as rate of interest is concerned, suffice it to say that in the case of other teachers, reference to which has been made in para 7 of the petition, this Court has awarded interest at the rate of 12% per annum. That rate seems to be reasonable rate of interest to be awarded to the petitioner. Otherwise also in case of Union of India vs. S.S.Sandhwalia, reported in 1994 (1) JT SC 62, the Hon'ble Supreme Court has awarded interest on the claim of retired officer at the rate of 12%. The respondents are directed to pay interest on the retirement benefits of the petitioner at the rate of 12% per annum from 18th January, 1991. The respondents are further directed to calculate the amount of pension and other retirement benefits payable to the petitioner within a period of three months from the date of receipt of copy of this judgment and the amount so calculated shall be paid to him within two months thereafter together with interest at the rate and from the date as aforesaid. Rule made absolute in the aforesaid terms. No order as to costs.

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